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Sentencing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16-CR-00414 (JSR)

5 ANDREW CASPERSEN,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 4, 2016
2:00 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 CHRISTINE I. MAGDO

Assistant United States Attorney

18 BRACEWELL, LLP

Attorneys for Defendant

19 PAUL L. SHECHTMAN

20 MARGARET LYNAUGH

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Sentencing

1 THE DEPUTY CLERK: Will the parties please identify
2 themselves for the record.

3 MS. MAGDO: Good afternoon, your Honor. Assistant
4 United States Attorney Christine Magdo on behalf the
5 government. With me at counsel table is Criminal Investigator
6 Kurt Hafer of our office. Good afternoon.

7 THE COURT: Good afternoon.

8 MR. SHECHTMAN: Good afternoon, your Honor. Paul
9 Shechtman for Mr. Caspersen, and Maggie Lynaugh is with me from
10 my law firm, and obviously Mr. Caspersen is here.

11 THE COURT: Good afternoon. Please be seated. We're
12 here for sentencing.

13 Before we turn to the interesting gambling disorder
14 issue, I think we need to first talk about the guideline
15 calculation. So, the presentence report has the total offense
16 level at 34, the criminal history category at I, and the
17 guideline range at 151 to 188 months.

18 Both sides seem to agree to that, although each side
19 sort of hints that they have minor disagreements with that.
20 The government seems to suggest that the Court should maybe
21 have a higher guideline range based on loss amount.

22 MS. MAGDO: No, your Honor, we're not suggesting a
23 higher range. We're just suggesting that in this case, the
24 guidelines actually underestimate the seriousness of the loss
25 amount.

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Sentencing

1 THE COURT: Okay. And defense counsel has some
2 problems with I think the broker enhancement, broker
3 adjustment.

4 MR. SHECHTMAN: Again, your Honor, no. It may
5 underscore the fact that some of these enhancements have an
6 arbitrary quality to them, but it certainly fits and applies,
7 and that's why we agreed to it.

8 THE COURT: Okay. So, I'll adopt the presentence
9 report calculation, total offense level of 34, criminal history
10 category of I, guideline range of 151 to 188 months.

11 But I want to note at the outset, in case the
12 government wants to comment, that as I indicated at the time of
13 plea, I think the calculation borders on the irrational.
14 First, the great bulk of the calculation comes about from the
15 loss amount. So, the total offense level is 34, 22 points are
16 based on the loss amount. I don't see why loss amount should
17 occupy in this sense, as it does in so many guideline cases,
18 such an inordinate position, overwhelming every other factor.

19 And I also don't understand what the rational basis
20 was for the commission coming up with any particular figure.

21 The defense has put in indications when the guidelines
22 were first promulgated, the same loss amount would have led to
23 an addition of 11 points, rather than 22 points. I'm not sure
24 what's changed between then and now that makes suddenly makes
25 this offense so much more guideline culpable. But maybe the

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Sentencing

1 government wants to say something about that.

2 MS. MAGDO: Your Honor, I'm not certainly an expert on
3 why the guidelines have changed, but my understanding is that
4 Congress had the intent to punish white collar criminals in a
5 way that was more equal to the way they were punishing people
6 who had committed drug offenses and violent crimes offenses.

7 THE COURT: When the guidelines were first promulgated
8 in the early 1980s, all the guidelines were intended to reflect
9 in some sense what was the mean average, except for white
10 collar crimes, which were intended to be higher. And since
11 then, they've been ratcheted up every few years so that they're
12 now many times what they were when the guidelines first came in
13 and said that they should be higher than they had been
14 historically. So what's rational about that?

15 MS. MAGDO: I believe actually in 2014, they were
16 ratcheted down slightly.

17 THE COURT: That was the first time that that had
18 happened, but that was after all these major increases that
19 I've just referred to.

20 MS. MAGDO: Well, as I said in my sentencing
21 submission, the guidelines are a starting point --

22 THE COURT: I consider them. Consider them
23 considered. But I don't see why they are a main starting
24 point. I think they are, to be frank, a pernicious starting
25 point, because they carry the aura but not the reality of

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Sentencing

1 something that is rationally arrived at.

2 Where many of these numbers come from and why, for
3 example, should the amount of the loss be given so much more
4 weight than, for example, the abuse of trust, which is, you so
5 correctly point out in your memoranda, was one of the most
6 dislikeable things that this defendant committed in his
7 substantial fraud. And yet that is what, two points or
8 something like that? As opposed to 22 points for the loss? It
9 makes no sense.

10 MS. MAGDO: I think we can agree that the loss amount
11 should factor in in some way in sentencing an individual.

12 THE COURT: We can agree on that. Maybe we'll just
13 leave it at that.

14 So let's turn to the gambling disorder which is
15 offered as a mitigating factor. I think that the defense has a
16 witness they'd like to call.

17 MR. SHECHTMAN: We do, your Honor.

18 THE COURT: Go ahead.

19 MR. SHECHTMAN: The defense would call Dr. Marc
20 Potenza.

21 THE DEPUTY CLERK: Please take the witness stand.
22 Remain standing.

23 (Witness sworn)

24 THE DEPUTY CLERK: Please be seated. State your name
25 and spell it slowly for the record.

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Potenza - direct

1 THE WITNESS: Marc Nicholas Potenza. Marc, M-A-R-C,
2 Nicholas, N-I-C-H-O-L-A-S, P-O-T-E-N-Z-A.

3 THE COURT: So, since this is offered in effect as a
4 mitigating factor, the defense bears the burden, so we'll hear
5 first from the defense. Go ahead, Mr. Shechtman.

6 MR. SHECHTMAN: Judge, I sent the Court and the
7 government yesterday a copy of Dr. Potenza's curricula vitae.
8 My intent --

9 THE COURT: It was much too long to read, but I filed
10 it away. I gathered from your submissions that, first, that he
11 was had a very distinguished academic career at Yale, it's not
12 Swarthmore, of course, as you, Mr. Shechtman, would recognize.
13 But it's not a bad place. And now he's a well-credentialed,
14 well-published authority on addiction and gambling addiction in
15 particular, yes?

16 MR. SHECHTMAN: That's correct, your Honor.

17 THE COURT: So noticed.

18 MR. SHECHTMAN: I'll proceed.

19 MARC N. POTENZA,

20 called as a witness by the Defendant,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SHECHTMAN:

24 Q. Dr. Potenza, what drew you to study compulsive gambling?

25 A. Back when I was in the medical scientist training program,

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1 which is a combined M.D. PhD program, I was thinking about
2 which area on which to focus my research. And I thought that
3 the brain was the most complicated organ in the body, and that
4 during my lifetime we were not going to understand fully how it
5 functions, particularly with respect to health and illness, and
6 thought I would focus on neuroscience.

7 THE COURT: So, I've read your report, which is very
8 helpful. But it seems, reading between the lines, that we
9 don't know very much about gambling addiction; particularly, we
10 don't know much about what causes it. We have various
11 theories, you have theories, other people have theories. But
12 it is something of a mystery still. Yes?

13 THE WITNESS: I think that we've learned a lot over
14 the past several decades, but we still have a lot more to
15 understand, so there are many unanswered questions.

16 THE COURT: Well, for example, when we're dealing with
17 a chemical addiction, like a drug addiction, we can test
18 various chemical reactions in the brain, the drug is ingested,
19 things happen chemically as a result.

20 Here, we don't really know why whatever is happening
21 in the brain, how it's being brought about. Do I have that
22 right?

23 THE WITNESS: I think in many ways, yes, that is
24 correct. We don't have the same set of animal models, for
25 example. Although there are inroads, Catharine Winstanley and

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1 others are trying to address this in ways that I think people
2 in the substance abuse field have been addressing this for a
3 number of decades. But we're far behind.

4 THE COURT: So, what we really have then, if I
5 understand your report right, is we have a series of symptoms
6 that appear to be common to a meaningful number of people and
7 that are characterized in the DSM by various criteria. Yes?

8 THE WITNESS: Yes, and I think that's similar to a
9 number of other psychiatric disorders.

10 THE COURT: So, but even those have changed, if I
11 understand the evolution from the DSM-3 to the DSM-5. There
12 has been some change, for example, illegal activity is no
13 longer a necessary criterion. Yes?

14 THE WITNESS: It is no longer an inclusionary
15 criterion for pathological gambling or now gambling disorder.

16 THE COURT: Because one could be a compulsive gambler
17 and never break the law at all.

18 THE WITNESS: One could. It is also not there for
19 substance use disorders or substance addictions, and, like with
20 gambling disorder, there are links with illegal activities for
21 substance use disorders.

22 THE COURT: So, is it your view that there exists an
23 effective treatment for gambling disorder?

24 THE WITNESS: I've been treating people for about 20
25 years in our public gambling treatment service in Connecticut.

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1 I believe we have striven to make advances with respect to both
2 the behavioral therapies and using empirically validated
3 therapies, behavioral therapies. We've also undertaken
4 randomized clinical trials to see if medications might be
5 helpful for people with gambling problems. But currently,
6 there are no medications that have an FDA indication for
7 pathological gambling or gambling disorder.

8 THE COURT: If I understand correctly, some of the
9 studies indicate that persons with gambling disorder relapse
10 80, 90 percent of the time.

11 THE WITNESS: I think that the course of gambling
12 disorder, we don't understand quite as well as, say, for
13 substance use disorders, because there have been fewer
14 longitudinal studies to investigate this.

15 That being said, there is also controversy as to what
16 constitutes a relapse, whether it be a slip, a lapse, or one
17 might consider a full-blown relapse.

18 THE COURT: So, let's take Mr. Caspersen. So, my
19 understanding is that he engaged in irrational investment
20 gambling, for lack of a better way to put it, for many years.
21 Yes?

22 THE WITNESS: Yes, I think that his pattern of using
23 options was highly risky and fits the definition of gambling.

24 THE COURT: What reason is there to believe that even
25 though he's now receiving some treatment, that he won't resume

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1 the same compulsive behavior after a moderate period of time?

2 THE WITNESS: Well, I think that while one cannot say
3 with absolute certainty what the future might hold, there may
4 be factors that people have reported as being linked to better
5 versus worse treatment outcome.

6 So, for example, in a study of Gamblers Anonymous, it
7 was found that attendance and participation in particular as
8 well as social supports were related to maintenance of
9 abstinence versus relapse.

10 So I think those would be some of the factors that
11 might be valuable or worthwhile to consider with respect to the
12 hope of a more positive outcome.

13 THE COURT: Hope is a wonderful thing, but my
14 understanding, first of all, is that psychiatrists and
15 psychologists are not so good at predicting the future as
16 opposed to analyzing the past. And that in any event, with
17 something as still uncertain in its causes and its treatment as
18 gambling disorder, that predicting the future is pretty
19 problematic. Yes?

20 THE WITNESS: I might see it a little bit differently,
21 given that part of my job during the week is to see people and
22 try to help people not experience the harms that they have
23 experienced from gambling and the harms that other people have
24 experienced from gambling. So, I try to utilize the tools that
25 we have, and the information that we have at the present time,

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1 to help people maintain abstinence and not experience the harms
2 that they have experienced or that others have experienced from
3 their gambling.

4 THE COURT: Are you familiar with an article in the
5 Canadian Medical Association Journal called "Gambling Treatment
6 Options: A Roll of the Dice"?

7 THE WITNESS: It's not coming to my mind. I'm not
8 sure if I've read it.

9 THE COURT: That particular source in that particular
10 publication said that a person with gambling disorder relapse
11 about 90 percent of the time.

12 You came to the conclusion Mr. Caspersen had a severe
13 gambling disorder. Yes?

14 THE WITNESS: Correct.

15 THE COURT: And that was based on a
16 two-and-a-half-hour interview plus a review of his records.

17 THE WITNESS: Correct.

18 THE COURT: Is that an adequate basis to make such a
19 diagnosis?

20 THE WITNESS: I followed the approach that I use in
21 making clinical diagnoses by performing a psychiatric
22 evaluation. And that is the approach that I use within
23 clinical settings and other settings.

24 THE COURT: Well, I'm just wondering, how can one make
25 such a substantial diagnosis on the basis of such a short

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1 interview?

2 THE WITNESS: Based on the interview, and the
3 collateral information and the current DSM criteria for
4 gambling disorder, which state that one needs to meet four or
5 more of the nine inclusionary criterion, and if they meet eight
6 or more of the criterion that is a severe gambling disorder.
7 That is the basis of my conclusion.

8 THE COURT: He also suffers from alcoholism, yes?

9 THE WITNESS: Yes, he -- he currently at the time of
10 the interview, he was abstinent from alcohol, by his report I
11 think since March of this year. But yes, he met the criteria
12 for alcohol use disorder.

13 THE COURT: And from depression?

14 THE WITNESS: Yes, he has a history of depression by
15 my interview.

16 THE COURT: So, putting all that together, wouldn't
17 his likelihood of relapse be even higher?

18 THE WITNESS: Well, I think that gambling addiction
19 disorder or pathological gambling frequently co-occurs with
20 other psychiatric disorders, including alcohol use disorders
21 and major depression. And we have proposed that based on the
22 existing data, that that may actually be helpful with respect
23 to guiding the specific therapies.

24 So, I'm not aware that that would necessarily increase
25 the risk for relapse. But I think, from my perspective, I

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1 would try to target those domains within a clinical treatment
2 setting in order to optimize the likelihood that he would not
3 relapse.

4 THE COURT: All right. Go ahead, counsel. Any
5 questions you wanted to put.

6 BY MR. SHECHTMAN:

7 Q. Dr. Potenza, I take it I'm right that the DSM-3, 4 and 5
8 classify compulsive gambling as a mental illness. Do you agree
9 with that?

10 A. I do.

11 Q. Why?

12 A. Well --

13 THE COURT: By the way, I'm sorry. This is a totally
14 cheap shot, but I can't resist. Isn't it true that
15 homosexuality was classified by the DSM-1 and 2 as a mental
16 disorder?

17 THE WITNESS: That's my understanding.

18 THE COURT: So, perhaps this is not quite the most
19 reliable publication.

20 THE WITNESS: Well, I think it's one of the main books
21 of nomenclature for the psychiatric field. And I do think that
22 as more knowledge is gained over time, that these books try to
23 reflect the increases in knowledge.

24 So we can go back and look at, for example, in this
25 case, teen dependence or tobacco use disorder, and if one goes

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1 back to the time of DSM 1 and 2, those were not considered as
2 harmful as they are now. So, I think things evolve over time.

3 THE COURT: Yes, but what I guess frankly what I'm
4 getting at is I wondered to what extent the DSM reflects, if
5 you will, ideological views of the time as opposed to something
6 more scientifically objective.

7 THE WITNESS: I think that that is a fair comment to
8 bring up, and particularly in the area of psychiatry,
9 psychology, where only over the past, say, quarter of a century
10 have we gained better techniques to understand the biology.
11 So, I think the field tries to incorporate knowledge in a
12 meaningful way, and I having been involved in the DSM-5
13 process, involved in the research work group, I can appreciate
14 the importance that they place on understanding the
15 neurobiology of these conditions.

16 THE COURT: Go ahead, counsel.

17 BY MR. SHECHTMAN:

18 Q. Why do you agree that this is a mental illness?

19 A. So, as a psychiatrist, I was trained to try to understand
20 and help people with respect to psychological distressing or
21 harmful thoughts or behaviors.

22 And I've seen a large number of people, several
23 hundred people with gambling problems, and I've seen the impact
24 that it can have on their, their mental states and their
25 functioning, and believe that it is a very serious, can be a

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1 very serious disorder for people.

2 Q. Pathological gambling or gambling disorder has been called
3 an addiction without a drug. Is that an apt phrase, and what
4 does it convey?

5 A. So, I think that it's an appropriate phrase. It's one that
6 I've used at times. I think one can think of the term
7 "addiction" and what it means and what it's derived from.

8 I think the use of the term "addiction" has varied
9 over the course of history, derived from the Latin word meaning
10 bound to or enslaved by. It was not linked to excessive
11 substance use going back 100 years, excessive patterns of
12 alcohol use. In the 1980s the DSM work group on substance use
13 disorders I think felt almost unanimously that it could be
14 defined by compulsive drug use.

15 In the 1990s, Howard Shaffer and others proposed
16 several core elements of addiction, continued engagement in the
17 behavior despite adverse consequences, compulsive engagement or
18 diminished control over engagement in the behavior, and in a
19 craving state that often preceded engagement in the behavior.

20 If one thinks of these as the core elements of
21 addiction, it perhaps can be applied to a broader range of
22 behaviors and substance use behaviors, and I think the data
23 that have been gained over the past 20 years with respect to
24 the neurobiological, genetic, co-occurring disorders,
25 epidemiological clinical phenomenon, among other areas, led the

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1 DSM-5 substance use disorder group to reclassify pathological
2 gambling together with substance use disorders into a substance
3 related and addictive disorders category.

4 Q. You agree with that categorization?

5 A. I do. Some of the -- the two work groups in which I was
6 involved, the research work groups, I was asked the question
7 whether gambling disorder and substance use disorders shared
8 similar features or not. And to go through systematically the
9 different domains.

10 And the other research work group looked at obsessive
11 compulsive spectrum disorders and whether, for example,
12 pathological gambling was similar to or distinguished from
13 obsessive compulsive disorder. Those data were published and
14 used by the work groups.

15 THE COURT: Well, my understanding is, correct me if
16 I'm wrong, that even our understanding of addiction has changed
17 considerably over the last few decades. And that, for example,
18 certain addictive drugs like cocaine don't involve really
19 serious withdrawal symptoms in the way other drugs do, yet they
20 still act in an addictive way because they, if you will, trick
21 the brain into thinking that the right choice is to use the
22 drug. Do I have that basically right?

23 THE WITNESS: I think that there are both similar and
24 unique aspects to different drugs. And so, for example, with
25 cocaine, when one is coming off of an acute intoxication, there

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1 is often what people describe as a cocaine crash. So, for
2 about the 24 hours after the high of the cocaine, people become
3 very somnolent, difficult to rouse, and oftentimes, if they're
4 in the emergency department, will pull the sheet over their
5 head.

6 Opiates have a very different pattern of withdrawal.
7 Kicking the habit and other terms like cold turkey are derived
8 from opiate withdrawal. Because of the piloerection and the
9 myoclonic jerks that people experience during opiate
10 withdrawal. So each drug has a different --

11 THE COURT: That's a good point. So my question then
12 is how does gambling disorder operate in that respect?

13 THE WITNESS: So there's been an inclusionary
14 criterion for withdrawal in the DSM criteria for pathological
15 gambling as well as gambling disorder. What that typically
16 involves is some irritability or unease during the acute period
17 of having gambled and then not gambling, and perhaps there
18 being other, for example, occupational obligations that keep
19 one from gambling when one is preoccupied with the urge to
20 gamble. It is a criterion that's acknowledged by a good number
21 of individuals, but population-based data suggests that it's
22 less frequently acknowledged than, say, tolerance.

23 THE COURT: Counsel.

24 BY MR. SHECHTMAN:

25 Q. Dr. Potenza, the legal literature talks about psychological

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1 gambling and sometimes uses the phrase, and some of the case
2 law says "pathological gambling hijacks the brain." Is that a
3 useful image?

4 A. It's a term that I try not to use, but I think the
5 concept -- because it's a little dramatic for me, but I think
6 the concept that the gambling behaviors and thoughts preoccupy
7 an individual and essentially take priority over other
8 obligations, I think is an apt one.

9 So one can think of one's time as being limited and
10 one's, you know, motivating behaviors as fitting within that
11 timeframe. And as gambling or substance use, whatever the
12 focus of the addiction is, takes more and more time, it forces
13 out the other areas of life functioning that I think are
14 important.

15 Q. There have been brain imaging studies relating to
16 compulsive gambling. What, if anything, do we learn from them?

17 A. Well, I think that the brain imaging field is at a
18 relatively early stage. There are preliminary data that
19 suggests that there are some similarities with substance use
20 disorders, particularly with involvement of brain regions like
21 the ventromedial prefrontal cortex and the ventral striatum.
22 These are considered decision-making and reward-related
23 regions, although they serve a large number of other functions.

24 But, some of the data suggests that there are linkages
25 between gambling disorders and substance use disorders, come

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1 from use of a monetary processing task called the monetary
2 incentive delay task. Where initially, Halmer and colleagues
3 found that individuals with alcoholism showed blunted
4 activation of the ventral striatum in anticipation of monetary
5 reward. That finding was replicated by a group in Germany. It
6 was subsequently shown that individuals who are family history
7 positive versus family history negative for alcoholism also
8 showed this blunted activation of the ventral striatum. So
9 individuals have risk for addiction, as well as adolescents who
10 are smokers versus non-smokers.

11 More recently, our group and one from Korea found that
12 individuals with pathological gambling showed a similar pattern
13 of a blunted ventral striatum activation in anticipation of
14 monetary reward.

15 THE COURT: So, just to return to what I asked you
16 earlier. My understanding from your own submission is this is
17 at most suggestive, this is far from anything that is firmly
18 established to a scientific certainty or anything like that.
19 Right?

20 THE WITNESS: I agree with that. I think most of the
21 imaging studies that have been performed to date are relatively
22 small. And there are now efforts, for example, the ABCD
23 Initiative is one where NIH is supporting data collection from
24 starting at age 9 or 10, and they're targeting over a five-year
25 period to get serial data, including brain imaging data, on

GB43CASS

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1 over 10,000 individuals.

2 THE COURT: So we might know a lot more in a few
3 years.

4 THE WITNESS: I'm hopeful.

5 THE COURT: But I've got to sentence Mr. Caspersen
6 today, unfortunately. So there we are. Go ahead.

7 BY MR. SHECHTMAN:

8 Q. The judge touched on this, but is there a relationship
9 between pathological gambling and alcohol consumption?

10 A. Yes. I think that relationship is perhaps complex. There
11 have been studies that suggest that as people drink more, they
12 gamble more heavily. And gamble more heavily towards losses.
13 There are also data that suggest that the two disorders
14 co-occur more frequently than by chance, both in clinic-based
15 data and in community population based data.

16 So there are data that suggests that there are both
17 shared genetic and shared environmental contributions to the
18 co-occurrence of pathological gambling and alcohol abuse or
19 dependence, and that was a study involving male twins where one
20 can make estimates of the genetic and environmental
21 contributions.

22 Q. Is there a relationship between pathological gambling and
23 depression and add to that life trauma?

24 A. Yes. So similarly is there a relationship between
25 pathological gambling and major depression. Again, there are

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Potenza - direct

1 higher odds that are seen in clinical and population based
2 samples. There are also shared genetic contributions. The
3 best fitting model in this case from the same cohort of male
4 twins suggested that the overlap between the two was driven
5 100 percent by genetic factors, although these models
6 overestimate somewhat the genetic contributions. There is
7 likely a substantial biological genetic link between the two.

8 THE COURT: I am not sure which way this cuts. So,
9 are you saying someone who has a gambling disorder has it in
10 part because of the depression, or are you saying the
11 depression exists in part because of the gambling disorder, or
12 what?

13 THE WITNESS: Or whether there is a common ideology to
14 both conditions. One can make a plausible description of any
15 of those three factors.

16 So one can, one of the inclusionary criteria for
17 pathological gambling or gambling disorder is gambling to
18 escape from a negative mood state or from dysphoria. So, if
19 one experiences the depression, they may, for negative
20 reinforcement purposes, so to take away the negative mood
21 state, they may engage in gambling behaviors.

22 Alternatively, if one gambles excessively and, for
23 example, loses large sums of money, that may have a negative
24 impact on their mood, and may lead to depression, or there may
25 be a common vulnerability factor for experiencing both

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Potenza - direct

1 disorders.

2 THE COURT: Well, so, if you have a drug addiction, my
3 understanding is that a part of what goes on is that while you
4 may take the drug originally to get pleasure, that eventually
5 you need to take the drug just to feel normal physically. But
6 I don't see quite how that translates into the gambling
7 disorder situation. At least I didn't see any evidence, maybe
8 I missed it, that Mr. Caspersen had to gamble to feel
9 physically normal. It may have been he had to gamble to feel
10 mentally normal, but not physically.

11 THE WITNESS: Yes. I think that that same logic can
12 also be applied to gambling disorder. And it resonates with
13 people who I see in treatment who say that, you know, over
14 time, it's not about the money. It used to be a good day at
15 the casino was winning \$100, but then a good day at the casino
16 is losing the \$100, but losing it over eight or 10 hours,
17 rather than over the first 20 minutes that they're there.

18 So there is something about the gambling behavior that
19 is different, it brings them to a different state. And there
20 are studies --

21 THE COURT: But my only point is saying it is more in
22 the nature of a psychological change than a physical change.

23 THE WITNESS: Well, so there are physiological changes
24 that occur when people gamble. Some of these differ in people
25 with gambling problems and those without. Gerhard Meyer in

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1 Germany obtained heart rate and pulse and biochemical measures
2 of people as they gambled, people with varying level of
3 gambling severity. Along with the --

4 THE COURT: Is that for people who gambled generally
5 as opposed to people with gambling disorder?

6 THE WITNESS: So he was going into a casino, assessing
7 their problem gambling severity, so whether they had a gambling
8 problem or not, and was collecting the data so he could look at
9 those sorts of questions.

10 THE COURT: I see.

11 Counsel.

12 BY MR. SHECHTMAN:

13 Q. And life trauma.

14 A. And life trauma. Yes, so there have been multiple studies
15 that have looked at -- although not as many as in some other
16 areas of problem pathological gambling -- that have looked at
17 reports of trauma in individuals with gambling problems. And
18 there are high rates of trauma that are reported, and some
19 studies over 60 percent of individuals with gambling problems
20 report emotional trauma, over 20 percent report sexual trauma,
21 and there are links between pathological gambling and trauma
22 related conditions, like post-traumatic stress disorder.

23 Q. Again, a question the judge touched on. Would you speak
24 more broadly about the relationship between severe pathological
25 gambling and crime and embezzlement and theft?

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Potenza - direct

1 A. Yeah. So there have been studies, several studies that
2 have looked at this question. Some have looked at data from
3 population based studies, so Mariana Tosheko Stein did an
4 analysis of different classes of individuals, a data driven
5 approach, and found that it was the illegal behaviors tended to
6 cluster in the most severe group of individuals with gambling
7 problems. And that seems to fit with my clinical experience.
8 And we've also looked at data from people calling from a
9 gambling helpline and looked at people who reported illegal
10 behaviors related to gambling versus those who did not, and
11 there were factors that suggested there were more severe
12 psychological, psychiatric concerns, as well as impacts like
13 debt and suicidality.

14 THE COURT: But, again I'm not totally sure which way
15 this cuts. If someone commits an embezzlement out of greed,
16 let's say, they make a more or less rational determination, I
17 can get away with it, and I'll be rich, and live the lifestyle
18 that I always wanted. And then they're caught and they receive
19 some honest prison time, and they say, hmm, I made the wrong
20 bet, and I'm not going to do it again, because it's not -- the
21 downside outweighs the upside.

22 But, if you have someone, as I understand what you're
23 telling me about gambling disorder, they won't be making a
24 rational choice. And therefore, it would take, one might
25 argue, a much more severe sentence to really bring home to them

GB43CASS

Potenza - direct

1 there is no way that even someone in their diminished state
2 could understand that this is a bad bet.

3 So maybe this is not a question for you really, more
4 for counsel. I'm not sure which way this cuts.

5 THE WITNESS: Well, and there may be individual
6 differences within that group that I think are important to
7 consider. I've seen a number of people in practice, clinical
8 practice, who, for example, have led very what one might
9 consider exemplary lives, but have embezzled money related to
10 their gambling, but otherwise morally upstanding citizens. And
11 those are some of the people actually I've seen over the longer
12 term who have done well, and have given back to the community
13 in a positive way.

14 THE COURT: Counsel.

15 BY MR. SHECHTMAN:

16 Q. When we spoke on Wednesday, you talked about one older
17 woman who fell in that category. Would you tell the Court
18 about that?

19 A. I think that there are several older women who I've seen in
20 treatment who have had problems with casino gambling and have
21 embezzled money. And, you know, some may volunteer time to
22 help people with gambling problems, some go back to jobs and
23 contribute to society in a meaningful way and have meaningful
24 relationships.

25 Q. They taught me at my college that it's hard to prove a

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Potenza - direct

1 negative. But, is there a sense of why some pathological
2 gamblers don't steal?

3 A. Well, there may be differences, and I was touching bases on
4 some of the illegal behavior data that we and other groups have
5 looked at. There may be different individual differences that
6 people have that they experience, either inherently or they
7 experience in life experiences. And there are differences
8 between people with gambling problems, and it is important to
9 understand those individual differences.

10 Q. Opportunity play a role?

11 A. Also, with respect to opportunity, and I think that that
12 does play a role with respect to gambling behaviors and the
13 extent of gambling problems that people can experience. So
14 having the opportunity to obtain or have large amounts of
15 money, I think that's an important consideration.

16 When we were doing our initial study of gambling
17 urges, and I solicited the advice of several people in the
18 state who had more experience than I did at the time with
19 respect to treating individuals with gambling problems, and
20 they noted that one of the triggers for people is to come into
21 a large amount of money, and that's one of the opportunities
22 that I think may play a significant role for people with
23 gambling problems. And some of the behavioral therapies work
24 on financial management aspects, and whether other people are
25 going to manage finances for the individual with the gambling

GB43CASS

Potenza - direct

1 problem, for example, is sometimes a very important
2 consideration.

3 THE COURT: So you think that the best thing I could
4 do for Mr. Caspersen is put him on welfare and make sure he has
5 no money whatsoever.

6 THE WITNESS: That wasn't the approach that we take in
7 our clinic. But what we try to do is if there is a conservator
8 who -- or some like a spouse, for example, who is may be
9 engaged in Gam-Anon, may be able to able to set limits and help
10 protect the vulnerabilities in someone who they may care for.
11 That's more where I was going.

12 Q. How severe did you find Mr. Caspersen's gambling addiction
13 to be?

14 A. As I mentioned briefly, I would grade it as a severe
15 gambling disorder.

16 THE COURT: Meaning that he hits a large number of the
17 criteria set forth in the DSM, yes?

18 THE WITNESS: Yes, but I should also mention that of
19 all the people I've seen in treatment, I cannot recall anyone
20 who had lost the amount of money that -- the financial amount
21 of money that he did. I've seen people who have come in with
22 six figure debts and went through bankruptcy. That's not -- I
23 mean, I can think of a number of people. But this amount of
24 money is --

25 THE COURT: In one sense, the reason the amounts of

GB43CASS

Potenza - direct

1 money were so large is he was gambling in investments as
2 opposed to gambling at the casino, correct?

3 THE WITNESS: I think he could gamble more money in
4 this area, yeah.

5 THE COURT: Go ahead.

6 Q. For a part of 2013, for about seven months, from roughly
7 six months from May to November, Mr. Caspersen did not gamble.
8 Does that alter your conclusion about his pathology?

9 A. No. I still think he meets the criteria for a severe
10 gambling disorder. There may be different factors, and some
11 that we don't understand, that influence why people go from
12 gambling large amounts of money to nothing. Same with
13 substance use disorder and trying to understand those patterns
14 I think is important.

15 With gambling problems, a number of people have told
16 me that while they may feel the urge to gamble, they don't have
17 the money at hand, so that can be one of the main factors. But
18 there may be others. Sometimes, you know, I think that the
19 number of people do feel ambivalent about gambling, people with
20 gambling problems, and there may be things that sway them one
21 way or the other. Something that triggers and moves them to
22 gamble, and something that helps intervene and something
23 that -- close friends, relatives, treatment providers,
24 hopefully help them restrain them from gambling.

25 Q. I want to go back to a question that Judge Rakoff asked

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Potenza - direct

1 you. He asked about physical symptoms. And I think when we
2 spoke, you told me about a patient or patients suffering from
3 pain and the effect of gambling on them?

4 A. So there have been some people who have chronic pain
5 conditions who have reported to me that when they are in the
6 process of gambling, that that kind of dissipates, it goes
7 away. So this fits into this negative reinforcement model of
8 getting to -- of gambling and perhaps gambling excessively in
9 order to relieve an uncomfortable state.

10 THE COURT: Did Mr. Caspersen report that?

11 THE WITNESS: No.

12 Q. One gets the sense from the literature, and I think, again,
13 Judge Rakoff alluded to this, that for many gamblers, money
14 doesn't matter after a certain point. It's about being in the
15 action. Is that consistent with your experience?

16 A. A number of people who I've seen with gambling problems do
17 report that. That it's less about the wins and losses than it
18 is about the act of gambling, and what they experience from
19 gambling.

20 Q. Then again to my last question, to go back to another topic
21 that Judge Rakoff asked you about, what can be done mitigate
22 the risks of Mr. Caspersen recidivating?

23 A. I think that there are -- while there is a lot that we
24 don't know about what is most helpful for people, there are
25 factors that have been linked to successful treatment outcome.

GB43CASS

Potenza - direct

1 Some of that is engagement in professional treatment, some of
2 that is engagement in 12-step programs, so Gamblers Anonymous,
3 which is modeled after Alcoholics Anonymous, has been around
4 for more than half a century and is widely available around the
5 world. Hasn't been as well studied as some other forms of
6 treatment, I think because of its anonymous nature. But data
7 do suggest, for example, from Nancy Petry's trial, that people
8 who attend GA tend to fair better than those who do not with
9 respect to gambling treatment outcome. And some of the factors
10 such as adherence and participation and the associate support
11 do appear linked to better treatment outcome within a group of
12 people attending GA, so those would be I think important
13 factors.

14 Q. I won't take you through all 12 steps, but I'll ask you
15 about the first one and why you think it is significant.

16 A. Yes. So I think some people have described addictions as a
17 disorder of decision making or as motivated behaviors gone
18 awry, and I think that the first step that to admit that one is
19 powerless over the behavior, that essentially removes that
20 aspect of the decision-making process. And if people can
21 accept that, and can accept that they cannot go back to
22 gambling because it leads to all these negative consequences,
23 then it removes that, and it actually empowers them to lead to
24 more healthy lives.

25 Q. Mr. Caspersen is, as part of his therapy, has been

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Potenza - Cross

1 prescribed naltrexone, if I say it right. Will you tell the
2 Court what that drug does.

3 A. Naltrexone blocks opioid receptors. It is a medication
4 that has an FDA indication for opioid use disorders and alcohol
5 use disorders. So going back now close to a quarter of a
6 century, there were clinical trials that found that for people
7 with alcohol use problems, that it seemed to target alcohol
8 urges or cravings and lead to better outcomes. We, amongst
9 other groups, have hypothesized it may be helpful for people
10 with gambling problems based on that aspect as well as how it's
11 thought to work with respect to influencing reward pathways in
12 the brain. And there have been several placebo controlled
13 trials that have found naltrexone to be superior to placebo,
14 but the data are mixed and we don't have an FDA medication for
15 gambling disorder.

16 Q. Just so the record is clear, you saw Mr. Caspersen for two
17 and a half to three hours, reviewed his medical records, the
18 option trading experts report, his own therapist's report, and
19 his trading records. Do I have the universe?

20 A. Yes, that is correct.

21 MR. SHECHTMAN: Judge, I thank the Court.

22 THE COURT: All right. Any questions from government?

23 MS. MAGDO: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MS. MAGDO:

GB43CASS

Potenza - Cross

1 Q. Good afternoon, Dr. Potenza.

2 A. Good afternoon.

3 Q. So, you testified that you've seen hundreds of individuals
4 with pathological gambling and other impulse control disorders,
5 right?

6 A. Correct.

7 Q. And would it be fair to say that of those hundreds, there
8 were many whose disorders you would character identify as
9 severe?

10 A. Yes.

11 Q. And of those who had severe disorders who came in for
12 treatment, they came for a variety of different reasons I
13 imagine, right?

14 A. Correct.

15 Q. So maybe some of them came because they'd lost all their
16 money?

17 A. Yeah.

18 Q. Some may have lost their house?

19 A. I'm not -- no one is coming to my mind with their house.
20 But people have lost a lot of money, people have been sent by
21 the legal system, particularly people with substance use
22 problems, but also some people with gambling problems. There
23 are a number of factors, spouses finding out about gambling
24 behaviors.

25 Q. Okay. So, is it fair to say that the vast majority of

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Potenza - Cross

1 those that you've seen with a gambling disorder have not come
2 because they've been arrested?

3 A. Majority have not come because they have been arrested,
4 that is correct.

5 Q. I think you mentioned some things that you use. Some
6 options that you use to treat people with gambling disorders.
7 There is individual therapy, right?

8 A. Correct.

9 Q. Group therapy, GA meetings, right?

10 A. Group therapy. What was the --

11 Q. GA?

12 A. GA, yes.

13 Q. What about involving their families in treating. Can you
14 explain how that would work?

15 A. Yes. So, I'm the medical director and the psychiatric
16 consultant to the Problem Gambling Services Program for
17 Connecticut. It's gone through various iterations over the
18 past 20 years. But we have counselors within the program, some
19 of whom, for examples, are social workers, and some who are
20 very focused on involving family members, and it is something
21 that we consider in treatment. Sometimes that's done in
22 couples, sometime that's done individually, because sometimes
23 it's helpful for spouses or partners to gain skills that will
24 be helpful for themselves. Because oftentimes people who are
25 close to people with gambling problems experience psychological

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Potenza - Cross

1 distress and maybe go through depression, anxiety. So we try
2 to help them get the help that they need, as well as help them,
3 assuming that they want to maintain the relationship and be in
4 the dynamic relationship going forward, to help them gain
5 skills that would be helpful for that relationship to be
6 healthy.

7 Q. You mentioned that there are certain safeguards that are
8 sometimes put in place, such as having a conservator take over
9 an individual's assets. Is that something you frequently use
10 in therapy or in connection with therapy?

11 A. So, having someone help with financial management more
12 broadly, whether that's an official conservator, that's less,
13 less frequent than perhaps not having the person have credit
14 cards, not -- you know, having an amount of money that they get
15 over a certain period of time to allow them to get done what
16 they need to get done, but to minimize the risk of getting into
17 a place where they accrue, for example, credit card debt.

18 Q. Do any other safeguards come to mind that you put in place
19 to make sure that people aren't subject to temptation that
20 causes the behavior or that brings on the behavior?

21 A. Well, there are a number of options that we consider and
22 that we may implement on a patient-by-patient basis. Some of
23 that involves skill building, so having people deal more
24 effectively with triggers. So sometimes people are not aware
25 of those triggers, sometimes people are not aware of the

GB43CASS

Potenza - Cross

1 internal stakes that are generated by those triggers, so
2 helping them manage. Identify those and manage those in a more
3 healthy way I think is important.

4 Some of it depends on the type of gambling that's
5 problematic. So, in Connecticut we have two large casinos, two
6 of the world's largest casinos, so a number of people I see
7 have problems with casino gambling, and both casinos in
8 gambling have self-exclusion options. So some people
9 self-exclude in order to minimize the temptation for casino
10 gambling, for example.

11 Q. So following on that example, if you had a patient who was
12 employed at a casino, for example, and had trouble with casino
13 gambling, would you encourage that patient to find a different
14 job?

15 A. I would go over the potential risk of exposing one to being
16 at a casino and to consider that.

17 Q. Do you find that these types of precautions are met with
18 success on at least some occasions?

19 A. Yes.

20 Q. So, those people who have gambling disorder -- and I just
21 want to clarify what you've said in your report and just make
22 sure we're all on the same page. They haven't lost their
23 ability to control their behavior. I believe what you wrote is
24 that they have diminished self-control. Can you explain what
25 that means?

GB43CASS

Potenza - Cross

1 A. Yeah. So I think this applies to addictions more broadly.
2 That it is a decision-making process whether or not to engage
3 in a motivating behavior. And that, that process I think is
4 not operating in a healthy fashion in people with addictions,
5 including with gambling disorder.

6 Q. Now, a couple questions specific to the defendant in this
7 case. You mentioned in your report, and I quote from page 23,
8 that the defendant reports having struggled with trying to stop
9 trading, setting self-imposed limits, and then breaking them.
10 Now, you start the sentence off with "he reports," so that's
11 something that he told you, right?

12 A. Hmm-hmm.

13 Q. That's not something that you verified or were able to
14 verify, right?

15 A. Well, in a psychiatric interview, that's the language that
16 I use. It's done usually on a one-to-one basis, and people are
17 sharing information. For struggles, it's an internal state.
18 It's kind of like how do you assess depression. You know, how
19 do you assess someone's internal mood state. And it's usually
20 through direct asking and trying to understand it within the
21 context.

22 THE COURT: But I think what the prosecutor is trying
23 to get at is the psychiatrist is necessarily dependent for
24 information to a substantial degree on what the patient tells
25 the psychiatrist. And if the patient has a motive to lie, then

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Potenza - Cross

1 that information might not be as reliable as it would otherwise
2 be.

3 So, the question is, in this case, theoretically,
4 Mr. Caspersen has a motive to want to be diagnosed as a severe
5 gambling addict. So, was there any way, other than the -- you
6 had some records, but was there anything else that was done to
7 sort of test whether he was giving you the truth, the whole
8 truth, and nothing but the truth, as opposed to an
9 exaggeration, for example?

10 THE WITNESS: Well, in looking through the records
11 that were provided to me as collateral information, what he
12 reported to me seemed to fit well with the records with respect
13 to things like preoccupation and placing of options, like,
14 right when the -- when the market opened, the -- it seemed
15 genuine to me during the interview, and it seemed to fit with
16 the psychiatric report for people who had been seeing him over
17 a longer period of time and arguably may have known him better
18 through more repeated contact.

19 THE COURT: The earlier questions put by the
20 prosecutor, I wasn't quite sure what she was getting at, but
21 she seemed to be suggesting that the Court might want to
22 imprison Mr. Caspersen in part because it would take him away
23 from all temptation. I concede, I'm sure the warden would make
24 an excellent fiduciary of his assets, but I don't know if this
25 is within your area of expertise, but are there respects in

GB43CASS

Potenza - Cross

1 which imprisonment would in your view make his condition worse?

2 THE WITNESS: Well, I have interviewed some people in
3 prison. And it doesn't -- there is, one, there is gambling
4 that goes on in prison. There isn't always optimal access to
5 treatment in prison. So I think there are some aspects of
6 imprisonment that may not be very good.

7 THE COURT: Counsel.

8 BY MS. MAGDO:

9 Q. You mentioned that you -- the things that Mr. Caspersen
10 told you in your assessment were consistent with the reports of
11 other therapists that you had reviewed. So, I believe you
12 reviewed a report or a report of Dr. Goldman. And isn't it
13 true that Dr. Goldman has only been the defendant's treating
14 psychiatrist after his arrest?

15 A. That's my understanding, yes.

16 Q. The notes that you reviewed from prior to his arrest, those
17 were from 2012 and 2013, right?

18 A. And some I think earlier too, from the early 2000s.

19 Q. So in the early 2000 reports, those were purely medical
20 reports as opposed to psychological reports, right?

21 A. Yes. There may have been a psychological testing, I don't
22 recall the date of that.

23 Q. For the most part, the pre-arrest psychological report that
24 you relied on are the notes from Dr. Brody in his seven
25 sessions with Mr. Caspersen, right?

GB43CASS

Potenza - Cross

1 A. That's my recollection.

2 Q. Okay. And in those notes, did the defendant say to
3 Dr. Brody that he had stopped his gambling behavior, if you
4 recall?

5 A. I don't recall whether he had mentioned that. I know that
6 there was more of a focus on the gambling after the arrest. I
7 think that my experience with people with gambling problems is
8 that oftentimes it is difficult for them to come into
9 treatment, and I think part of that may have occurred early in
10 the 2000s. He may have been a bit more forthcoming later on,
11 around 2012.

12 But I think that it's not uncommon for me to see there
13 being different barriers, be it guilt, embarrassment, shame, be
14 it ambivalence about acknowledging the gambling problem and
15 addressing the gambling problem. It's consistent with what
16 I've encountered, and I think data suggests that it's about
17 10 percent of individuals with gambling problems who engage in
18 some form of treatment.

19 Q. I guess what I'd like to differentiate between is the
20 treatment that he had after he was arrested. By that point, he
21 knows that he's been charged with crimes, and he knows that he
22 will eventually be sentenced. Right?

23 A. I --

24 Q. Presumably?

25 A. I presume so.

GB43CASS

Potenza - Cross

1 Q. So as the judge implied --

2 THE COURT: Well, if he doesn't know that by now, he's
3 under a great illusion.

4 MS. MAGDO: Right.

5 Q. My point is that in the therapy that he engaged in after he
6 was arrested, didn't he have an incentive to exaggerate his
7 symptoms, knowing this was in preparation for sentencing?

8 I'm not asking whether he did or not. Is it logical
9 to assume that one would have a different incentive after one
10 is arrested than before one is arrested?

11 A. That's one possibility. But it's not the only possibility.
12 I think that as his trading records indicate, he was gambling
13 large amounts of money, and I imagine -- and it's consistent
14 with his reports that this was associated with significant
15 psychological distress.

16 Q. Are you aware that by the time he sought treatment, in
17 November 2012, he had already committed a fraud of over \$2
18 million? Yes?

19 A. Yes.

20 Q. Are you aware that he lied to that therapist, that, for
21 example, he said that he was actively pursuing career options
22 outside of the financial services industry?

23 A. Well, lying about gambling behaviors is actually one of the
24 criteria that persists in DSM-5, so again, it wouldn't surprise
25 me. I think it speaks to the ambivalence that many people have

GB43CASS

Potenza - Cross

1 about giving up gambling.

2 Q. And isn't it true that Dr. Brody recommended that he hire a
3 financial manager to stand between him and his remaining
4 assets?

5 A. That may well be true.

6 Q. Do you know whether he did that?

7 A. I don't believe that that happened, but I'm not certain.

8 Q. So, would you agree with Dr. Brody's conclusion in his
9 report that, prior to his arrest, earlier this year,
10 Mr. Caspersen had not made any serious attempts to stop
11 gambling?

12 MR. SHECHTMAN: Judge, I'll stipulate to that. But he
13 couldn't say that prior to the arrest, because this is 2012.
14 So there's --

15 MS. MAGDO: I'm sorry. Not Dr. Brody. Dr. Goldman's
16 assessment post-arrest. I misspoke.

17 Q. Dr. Goldman, who has been the defendant's treating
18 psychiatrist since April of this year who has been seeing him
19 twice a week. And in his report, which I believe you reviewed,
20 he concludes that the defendant never made any serious effort
21 to stop gambling.

22 Do you agree with that conclusion?

23 A. I think it depends on what you describe as a serious
24 effort. I think that he did not engage in formal treatment,
25 which would have been a more serious effort. I imagine that he

GB43CASS

Potenza - Cross

1 may have struggled with his behavior, and that is consistent
2 with what he reported with the self-imposed limits.

3 THE COURT: A variation on that, assuming he didn't
4 make a serious effort, on the one hand, that might be
5 consistent with his not taking the problems and deceptions he was
6 imposing on others very seriously. But on the other hand, it
7 might just simply reflect the severity of his own gambling
8 disorder. Yes?

9 THE WITNESS: Yes. That's my feeling, my impression.

10 Q. I'd just like to go briefly over some other psychiatric
11 disorders that are in the DSM-5 I believe. Exhibitionist
12 disorder. Are you familiar with that?

13 A. It's not an area that I focused on.

14 Q. Would you say that people who have this disorder have a
15 diminished ability to stop exposing themselves to other people?

16 A. So, people who seek treatment for or engage in
17 exhibitionist behavior I would imagine do have some impaired
18 self-control over their behaviors. Although, I can't recall
19 having seen someone with exhibitionism, so it is really not my
20 area of focus in psychiatry.

21 THE COURT: Counsel, where do you see -- I'm looking
22 at the DSM criteria, DSM-5 criteria for gambling disorder. And
23 I'm not seeing exhibitionism. Maybe I'm missing it.

24 MS. MAGDO: I'm sorry. I'm moving on to other
25 disorders, not gambling disorders.

GB43CASS

Potenza - Cross

1 THE COURT: Oh.

2 MS. MAGDO: But other disorders that may lead to
3 antisocial or illegal conduct, and I'm just trying to elicit
4 that these are also classified as mental illnesses and mental
5 disorders in the DSM-5, and that these disorders such as
6 pyromania, kleptomania, pedophilic disorder, may make it more
7 difficult for people to control these behaviors. That's all I
8 want him to opine on.

9 THE COURT: Okay. I thought you were making a comment
10 on the current political contest for the presidential election,
11 but I guess I was wrong. Go ahead.

12 MS. MAGDO: I hadn't gotten to sexual sadism disorder
13 yet, which is a thing.

14 Q. So is it fair to say that people who have these disorders
15 may have some impaired ability to control their behaviors?

16 A. I think impaired impulse control does apply to a broad
17 range of psychiatric conditions, across different
18 categorizations. I think the DSM-5 as compared to the DSM-4
19 was trying to take what was a heterogeneous grouping of
20 disorders, in which pathological gambling was placed, and when
21 it was classified with kleptomania and pyromania, and separate
22 it from and include it in the addictive disorders. And now
23 that what used to be impulse control disorders not elsewhere
24 classified in DSM-4 is now disruptive impulse control and
25 conduct disorders.

GB43CASS

Potenza - Cross

1 So they've grouped together disorders that are more
2 categorized by going up against social norms, if you will, and
3 removed gambling disorder together with the addictive and
4 substance abuse.

5 Q. That's arbitrary. If we lived in a society where gambling
6 were illegal, it would be next to kleptomania, presumably.

7 A. Well, I'm not going to speculate.

8 Q. My point simply is that these disorders, maybe they're not
9 in the same chapter of the DSM, they have certain things in
10 common. Namely, that they may impair somebody's ability to
11 control their behavior. I'm opposing that to disorders where
12 someone has no ability whatsoever to control their behavior.

13 So would you say that these disorders that I've named
14 have that in common, they diminish someone's capacity to
15 control their behavior?

16 A. I think that having no control over one's behavior is
17 not -- I can't think of any instances where that happens on a
18 regular basis. I think it is more that a number of conditions
19 are categorized by impaired impulse control. And it goes
20 across a broad range of categories.

21 Q. For example, someone who is diagnosed with pedophilic
22 disorder, do you know, is that a mitigating factor for someone
23 who has committed a crime of child molestation?

24 THE COURT: Counsel, these are fair arguments when we
25 hear argument from counsel, but I don't think it really is a

GB43CASS

1 question for this witness. You can certainly make that
2 argument in a few minutes when I hear from counsel on this.

3 MS. MAGDO: That's fine. Thank you, your Honor.

4 THE COURT: Very good. Anything further from defense?

5 MR. SHECHTMAN: Nothing, your Honor.

6 THE COURT: Thank you so much. You may step down.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: So, before we turn to other aspects of
10 this sentence, let me hear from counsel and I'll tell you what
11 my initial take on this is, subject to being further influenced
12 by counsel.

13 So, I think that while we don't know nearly as much
14 about it as we know about some other disorders, I think it is
15 more likely than not that there is such a thing as gambling
16 disorder and that Mr. Caspersen suffered from it, and that it
17 diminished his ability to make rational decisions. What
18 follows from all that is less clear.

19 But just on those propositions, let me hear if counsel
20 want to make further argument before I adopt those very limited
21 initial determinations.

22 MR. SHECHTMAN: Judge, I don't have further argument.
23 Our point on calling Dr. Potenza was to establish just those
24 points. I think the question what follows from that is
25 sentencing.

GB43CASS

1 THE COURT: We'll get to that in a minute.

2 MR. SHECHTMAN: I mean that not glibly. But what
3 follows from that is a very difficult moral judgment for the
4 Court. And what's important to us is to realize that this is a
5 fellow with a severe, most severe pathological gambling
6 problem. This is a fellow who acted irrationally for a long
7 period of time as to his own money and then as to others. And
8 that all of that should weigh heavily in the balance this
9 afternoon.

10 THE COURT: Okay. Let me hear from the government.

11 MS. MAGDO: Your Honor, I agree with Mr. Shechtman
12 that the remaining issue is really what weight the Court should
13 give to Mr. Caspersen's gambling addiction as a mitigating
14 factor, rather than whether he had one. So, I don't oppose --

15 THE COURT: I think there are two aspects of that,
16 that maybe you want to comment on. There was at least a
17 suggestion in the government's papers, and there are certainly
18 some reported cases and some statements of the sentencing
19 commission at an earlier time, that suggest that it should have
20 no weight. And I'm frank to say I don't understand that.
21 Among the most fundamental programs of our legal system when it
22 comes to crime are that we distinguish between people who
23 commit crimes because they have made a rational choice that
24 they would rather do something antisocial and harmful to others
25 in order to gain their material benefits or other benefits, and

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1 those who act with diminished capacity and who are to some
2 degree not acting with a full deck.

3 And the reason the legal system makes that distinction
4 is because the criminal justice system in particular is an
5 expression, among other things, of fundamental moral
6 principles.

7 So for example, there was a suggestion in one of the
8 cases the government brought to my attention, although I think
9 I interpreted it somewhat differently than the government did,
10 that motive is irrelevant. How can that be?

11 MS. MAGDO: Well --

12 THE COURT: How can it be that if someone steals a
13 loaf of bread, to take the classic example, because they're
14 starving, they are treated the same as someone who steals a
15 loaf of bread because they walked down street and saw a nice
16 loaf of bread and thought he'd like to eat it right then and
17 there rather than when he got home to his 20 other loaves of
18 bread.

19 So, it seems to me it is relevant. Maybe I'm
20 mischaracterizing government's position.

21 MS. MAGDO: That's certainly not our position, your
22 Honor.

23 THE COURT: Okay.

24 MS. MAGDO: And we are not saying that gambling
25 disorder could never be a mitigating factor in sentencing. And

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1 we're not saying that it should be ignored here in this case.
2 We are saying that the Court should consider it. But, that in
3 the context of this defendant, and of these crimes, that there
4 are other things that outweigh whatever mitigation the gambling
5 disorder provides.

6 THE COURT: That's important. I want to get to those
7 in a minute. But let me just raise the other concern I had
8 while we're still on the gambling disorder.

9 I'm somewhat troubled by the fact that I don't think
10 we know enough about gambling disorder to be able to speak of
11 an effective treatment with any degree of confidence. There
12 are some studies that suggest some drugs may help. There are
13 some studies that suggest that cognitive therapy may help.
14 These are all very soft, very preliminary, very many of them
15 have not been attempted to be reproduced, many of them have not
16 been subject to long-term studies. Our very excellent expert
17 pointed out, for example, that statistically a lot of studies
18 so far have dealt with very small numbers, and that a much
19 bigger study is underway but it isn't there yet.

20 And so while gambling disorder may be a mitigating
21 factor in the sense it reduces the immorality of the underlying
22 behavior, if it is to take the extreme incurable -- and I'm not
23 suggesting that that's the extreme, but just to give that as
24 the end of the curve so to speak, then I'm not sure that it
25 should weigh that much with the Court, because the guy will be

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1 a recidivist.

2 Now, again, I'm not saying that's the situation here,
3 but I'm concerned about that aspect of it. I don't know if
4 either side wanted to comment on that.

5 Maybe that's more of a question for Mr. Shechtman.

6 MS. MAGDO: Actually, it is something that I've
7 thought about a lot, which is that to the extent that he gets a
8 break for his motivation or his lack of nefarious motivation at
9 the outset, there is also the continuing disorder which he will
10 presumably be struggling with to some extent or another for the
11 rest of his life, just the way an alcoholic is never fully
12 cured.

13 I think it is interesting, actually, in some child
14 exploitation cases, the fact that the defendant does not have a
15 sexual interest in children and was merely trading the child
16 pornography for money, is actually a reason that people say
17 that that person will not reoffend, because they weren't doing
18 it out of a disorder. It makes perhaps the initial motivation
19 more egregious and more worthy of punishment, but perhaps the
20 recidivism risk is lower, whereas here it's just the opposite.

21 So, I think that's another reason that a significant
22 sentence is warranted, especially because we submit that this
23 defendant is already a bit of a recidivist. In 2012 he
24 committed a fraud on his mother and his brother over \$2
25 million. I mean, he's lucky that they didn't, you know, go to

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1 the police with that. That's a crime. And yet, even that was
2 only enough to deter him for a few months.

3 He's not undeterrable. He stopped trading for a long
4 period in 2013. But, that was not enough to make him commit
5 seriously to getting himself better. So that's why we think a
6 substantial sentence is needed to convince him of that.

7 THE COURT: Mr. Shechtman, before we hear your general
8 comments, I want to give you a chance to comment on the
9 comments just raised.

10 MR. SHECHTMAN: Judge, let me say something just about
11 the facts of 2013, which I shared with Ms. Magdo last week.
12 And the facts really go to your question, your last question I
13 think to Dr. Potenza about the severity of the gambling,
14 meaning not dealing with this appropriately in 2012.

15 And Mr. Caspersen would be the first person to tell
16 you that, that he didn't. 2012 treatment records end in March
17 of 2013 with a statement "the gambling disorder is in
18 remission." It wasn't.

19 And what's particularly interesting is in the first
20 months of 2013, while he was getting treatment, he was getting
21 relatively small -- for Mr. Caspersen -- distributions from the
22 family, \$50,000, \$20,000, four or five of them. And each time
23 he got them, money went directly to his trading account. He
24 gambled and he lost everything.

25 And then in April 2013, he had no more. And when it

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1 got to the end of that year, he had a \$4,900 bonus the end of
2 2013. And the day he got it, he put it into his trading
3 account, and he traded. So, I would say the 2013 story is the
4 story of most severe pathological gambler.

5 Look, I've done this for a long time, you've done it
6 and sat in judgment of people even longer, and I can't tell you
7 that Andrew Caspersen won't recidivate. It's been a bad
8 history since 2000.

9 But I can tell you that he is seeing a therapist who
10 believes in him and has written the Court in a long portion of
11 that letter why he thinks that there is a real likelihood here,
12 a high likelihood here of non-recidivism.

13 I'm not going to point them out, but you've got four
14 pathological gamblers in the back, two of them lawyers, and
15 they have not gambled for a long period of time. And they have
16 not gambled because the craziest thing is, Gamblers Anonymous,
17 which, look, I would joke about Alcohol Anonymous, I would say
18 it is a place where people go to date, right, I think people
19 who take it seriously go for treatment.

20 And what you learn about Gamblers Anonymous, and what
21 Mr. Caspersen's learned, is it's an extraordinary support
22 group. He went Tuesday night and discouraged people from
23 coming today in the view that you didn't need to see the faces
24 of 30 pathological gamblers. But all of them have stayed out
25 of trouble by propping each other up. His two supporters, his

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1 two principal supporters are here today.

2 Look, they will tell you that there are people in that
3 group who fail. But they'll also tell you that the vast
4 majority of people in those groups have succeeded because of
5 each other. And that is fairly remarkable. And I know how
6 committed Andrew Caspersen is, I don't think he'll disappoint
7 the Court.

8 I suppose if he does, we'll be back before you or
9 somebody else and some other lawyer won't be able to say what
10 I'm saying today. But, today what I'm saying is I don't think
11 Andrew Caspersen is a high risk of recidivism.

12 I think he went through an enormous trauma. His
13 girlfriend's death, his father's death, and his own depression,
14 and always found a way --

15 THE COURT: I didn't ask the expert about those
16 traumas because I didn't think he had particularly, he mentions
17 them in his report, but it wasn't a focus. But, I'm not sure
18 how much weight, if any, I should put on them, and I'll tell
19 you why, and then you can respond.

20 So, undoubtedly the death of his girlfriend in 9/11
21 was very traumatic. But, he turned his life around in that
22 respect, and he entered into a loving relationship with another
23 fine woman, and he married her and had children and was from
24 all reports a good father and so forth.

25 So he overcame that from all objective indicia in the

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1 way that other people overcome the traumas that all of us in
2 life sooner or later encounter.

3 With respect to his father, which again, I don't mean
4 to minimize at all, but my understanding is that his father
5 killed himself at the age of something like 67, I believe,
6 because he was in great pain from incurable cancer. And so it
7 was -- this is unfair, perhaps -- but as a form of euthanasia,
8 and he left a note indicating that so to speak. And so,
9 undoubtedly, when one loses a parent that one is close to, that
10 has traumatic effects. I don't mean to minimize that. But it
11 wasn't -- I'm having some difficulty associating either of
12 those events with the pathological gambling.

13 MR. SHECHTMAN: Let me say this. If I was sitting
14 where you were, I could add a point to that, which is his
15 gambling began before Cat's death, and indeed he lost \$2
16 million before Cat's death. But having said that, I would add
17 the following. That was for Andrew Caspersen an
18 extraordinarily traumatic event. You have Mrs. MacRae's
19 description of it, you have Andrew's mother's description of
20 it, of really a sort of almost a year-long suicide watch.

21 And the story of his father's death is more
22 complicated. It is alluded to in Dr. Goldman's letter. There
23 were, as Dr. Goldman says, financial improprieties connected to
24 that. So the reason for the suicide that is given in press
25 accounts I think is not the full story of that event, and this

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1 was a reverential relationship, and for good reason. If one
2 knows of Ben Caspersen, he was as philanthropic a man as one
3 could find. And whether Princeton or Harvard --

4 THE COURT: I've forgiven him that.

5 MR. SHECHTMAN: And it was a real trauma, and the full
6 story of it weighed heavily on Andrew Caspersen.

7 I guess I'd say this. That's as good a woman as there
8 is. That's the wife I am being rude and pointing to. But, we
9 all know from the lives of our friends, you can be married to a
10 very fine person and hide depression. And I think Andrew
11 Caspersen went through most of his adult life with depression
12 that was exacerbated by two very real and meaningful events,
13 and is a piece of this story.

14 But I'll go back to where I started, which is there
15 are no guarantees. Your Honor has probably sentenced many
16 people who stood before you and said "I'll never do it again,"
17 only to see them again at probation hearings. There are no
18 certainties.

19 It's a bad day to say "I bet." But I bet on Andrew
20 Caspersen not recidivating.

21 THE COURT: All right. So, let's move to the general
22 factors that bear on sentence, which are set forth in Section
23 3553(a) of Title 18. And I think it's worth remembering what
24 that statute says. This is the mandate of Congress. Unlike
25 the guidelines, this is binding on the Court.

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1 And it begins: The Court shall impose a sentence
2 sufficient, but not greater than necessary, to comply with the
3 purposes set forth in paragraph two of this subsection.

4 The Court, in determining the particular sentence to
5 be imposed, shall consider, and the first item, not the one
6 referred to as paragraph two, but before we even reach
7 paragraph two, we have paragraph one: The nature and
8 circumstances of the offense and history and characteristics of
9 the defendant.

10 Now, here I think as to the first part of that, there
11 is no disagreement among counsel that this was an egregious
12 offense by any possible measure or view. It was a substantial
13 fraud, it was a fraud that involved the deception of numerous
14 people who had great confidence and faith in the defendant. It
15 was a fraud that used people. And it was a fraud that had
16 continued for a substantial period of time, and might have
17 continued for even more time, had one of the victims not become
18 wary.

19 I think there is less agreement, but I think maybe now
20 substantial agreement nevertheless, on the history and
21 characteristics of the defendant. Which I think there is
22 agreement that, other than this very considerable lapse, that
23 he led a very upstanding life, was an outstanding citizen, very
24 well regarded for good reason, all set forth in the many
25 excellent letters that I've received on his behalf. And that

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1 his failing was at least in material part a reflection of a
2 gambling disorder.

3 So unless there is disagreement about that, I'd like
4 to move to the paragraph two. But let me find out if there is
5 anything further either counsel wants to say about paragraph
6 one.

7 MR. SHECHTMAN: Nothing, your Honor.

8 MS. MAGDO: Just briefly, your Honor. You mentioned
9 that the crime was committed in material part to feed the
10 gambling addiction. And I know that the defense has
11 characterized this as mere serendipity, but I don't think it's
12 just bad luck when a fraudster pays off a \$2 million apartment
13 that's leveraged to the hilt entirely with crime proceeds, and
14 at the same time purchases a \$3 million -- \$3.2 million home in
15 Westchester, at around the same time.

16 I think it's just a little bit disingenuous to say
17 that -- they literally used the words "no choice." I just, I
18 cannot let that stand without comment.

19 THE COURT: I thought there was agreement that he had
20 diminished capacity, but still had voluntary capacity, and
21 could have stopped this at any time.

22 But what is also notable is that at times when he had
23 made a ton of money, and could have paid everyone back, he went
24 and reinvested that money in another of these extraordinarily
25 high risk bets, and lost it all. So, that is at least I think

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1 strongly indicative of someone who is not playing with a full
2 deck. Because you can well imagine -- and he had gone through
3 that process several times before. And so now, he hits it big,
4 he's in a position to pay off everyone, and I think if I recall
5 correctly, have about \$50 million left for himself.

6 So, every rational part of his mind would have said
7 thank God I've escaped, they'll never know, I can go back to a
8 less stressful existence, and I'll wind up a rich man, and the
9 whole thing will be over. And instead, goes and repeats the
10 same high risk betting as he did before.

11 To my mind, that was very strong evidence of the
12 severity of his gambling disorder.

13 MS. MAGDO: Your Honor, as we've said, we're not
14 challenging that he had some impairment due to a gambling
15 disorder. I just don't want the record to reflect that there
16 was no use of victim money for personal benefit, other than
17 gambling.

18 THE COURT: At no time was Mr. Caspersen leading the
19 life of the 99 percent as opposed to the 1 percent. I will
20 take that as a given.

21 I'm sorry, you had other things?

22 MS. MAGDO: I just had one other thing briefly. Your
23 Honor referenced the -- I believe you used the word "excellent
24 letters." And no doubt those are excellent letters. But I
25 would just like to point out that three of the four people who

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1 have known the defendant since birth, namely his three older
2 brothers, have not written letters. And I think that just
3 bears mentioning.

4 THE COURT: That's not irrelevant. If I were in your
5 place, I would be more inclined to emphasize the letters from
6 the victims that were submitted by the government, which point
7 out quite eloquently in their own right how much the victims
8 were hurt by this crime. Not only in their investments, but in
9 their reputation in the kind of businesses that they were
10 conducting. All of that was put at risk, and Mr. Caspersen was
11 quite prepared to put it even more at risk.

12 MS. MAGDO: Oh, absolutely.

13 THE COURT: I think that's -- I'm not sure how much
14 inference one should draw from the absence of any particular
15 person writing a letter. I think the Court should pay more
16 attention to what is before the Court than to what is not
17 before the Court, is my only point.

18 MS. MAGDO: Certainly. Thank you.

19 THE COURT: Let's turn to Subsection 2 of Section
20 3553(a). The need for the sentence imposed (A) to reflect the
21 seriousness of the offense, to promote respect for the law, and
22 to provide just punishment for the offense.

23 And I read that to mean that under any conceivable
24 analysis there has to be prison time or (A) would not be
25 achieved. The big question, of course, is how much prison

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1 time.

2 Then we get to (B) and (C). (B) is to afford adequate
3 deterrence to criminal conduct, and (C) is to protect the
4 public from further crimes of the defendant.

5 I think (B) when read in context of (C) is talking
6 about specific deterrence, and (C) is talking about general
7 deterrence. So, on specific deterrence, this is the point I
8 raised earlier, I think the disorder cuts both ways. If it is
9 so severe as everyone, all the psychologists seem to agree,
10 then at least the argument can be made that that calls for a
11 higher prison time because it really requires meaningful prison
12 time to convince the defendant never to do it again.

13 However, all the studies I've read over the years in
14 many white collar cases, all suggest that that is in fact not
15 how deterrence, specific deterrence works in white collar
16 contexts. None of this is hard science or anything like that.
17 But, there are many studies that suggest that even modest
18 prison time operates as an effective deterrent on white collar
19 defendants as a group.

20 And if you exclude sort of professional comment types,
21 the recidivism rate for white collar defendants who have
22 received even modest time, it is quite low.

23 So, one turns then to general deterrence. General
24 deterrence, of course, when the crime is as large as this one,
25 calls for substantial time. But I'm not sure there is any

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1 magic in any given number of years. And in fact, again to talk
2 about the studies, which are not very scientific at all, but
3 nevertheless the studies suggest that there is no way to
4 measure how much more general deterrence, if any, is achieved
5 by adding two years or five years or 10 years to a prison term.
6 A meaningful prison term is necessary to have general
7 deterrence, but how much prison time is really largely a matter
8 of guesswork, or of taking account of the other factors other
9 than general deterrence into sentence.

10 So let me stop there. I've covered (B) and (C). Let
11 me hear what the parties want to say about (B) and (C). I
12 think here the government is bearing the burden on this, so
13 we'll hear from the government first.

14 MS. MAGDO: I think, your Honor, we've touched upon
15 deterrence already. In particular in talking about the
16 recidivist risks of someone who has a serious mental health
17 issue. And I do think that that mitigates in favor of a
18 substantial sentence. I was not implying that there should be
19 a prison term in order to remove temptations from gambling. It
20 was a different point.

21 THE COURT: No, I misunderstood your point, but you
22 clarified it.

23 MS. MAGDO: Okay.

24 THE COURT: Although, just the very image of a prison
25 warden acting as a conservator was an image I won't likely

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1 forget. When I'm in the mood for bad jokes, I will remember
2 it. But, that was not your point.

3 MS. MAGDO: And your Honor, with respect to general
4 deterrence, I think it goes back to the first part of
5 Subsection two, which is the seriousness of the offense, and I
6 can address that now or later, and just punishment.

7 We've spoken a lot about Mr. Caspersen. We haven't
8 spoken very much about his victims yet. But, I do think that
9 we have to -- they are front and center here. I have met with
10 all but one of them myself personally, and I've seen the impact
11 that this has had on them. Even doubly worse is the fact that
12 they didn't feel at liberty to tell the Court about that
13 themselves.

14 So, I do think that in considering the need for
15 deterrence, we should also think about the fact that this is
16 not a victimless crime. This is not just a crime that
17 benefited the defendant. It also really hurt other real
18 people. So, that's pretty much all I'd like to say on that.

19 THE COURT: All right. Mr. Shechtman.

20 MR. SHECHTMAN: I'll speak briefly as well, your
21 Honor. I know those same deterrent studies that your Honor
22 referred to, and they seem to tell us what Jeremy Bentham told
23 us long ago, which is lent seems to be less important than the
24 sentence itself, and the immediacy, and that that's what
25 deters.

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1 But, I want to say one other thing, and that is one of
2 the things that I think --

3 THE COURT: The only trouble is, half the people here
4 won't know who Jeremy Bentham is. He didn't play for the
5 Chicago Cubs, so why should they know.

6 MR. SHECHTMAN: They'll know. But, more seriously, it
7 couldn't be a more serious afternoon. If you look in this
8 audience, these are Andrew Caspersen's friends, classmates, not
9 a single one of them knew that he was a compulsive gambler.
10 None of them. That's how well he hid it. None of them knew
11 that he'd blown through 23 million of his own money or he was
12 stealing from other people, including the good gentleman in the
13 front row who he tried to steal from, or the gentleman in the
14 second row that he did steal from.

15 And I say that because if you want deterrence, in
16 large measure it comes from exposure and humiliation. And
17 that's what's happened here. And it's happened in spades, it's
18 happened to people who grew up with him, right, now know the
19 illness, now know the suffering he inflicted on his wife, all
20 of whom are as close to his wife as they are to him. And there
21 was a time in this country when exposure was the punishment,
22 right. I think today that exposure ought to give the Court a
23 strong sense that there is deterrence here, because I don't
24 think any of those people, they all were mortified, they all
25 couldn't believe -- one of them said I thought it must have

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1 been April Fool's Day when I read this, and I looked at the
2 headline again.

3 But they're all here today because they really do
4 think this is mental illness, and I really think that exposure,
5 that humiliation, is a way of guaranteeing the Court that a
6 lengthy sentence isn't necessary to deter.

7 Specific, general deterrence, who knows. Government
8 says in its brief that there is a public outcry that justifies
9 a harsh sentence here. I'm not a great believer in public
10 outcry. I would say this, without --

11 THE COURT: I'm not going to dwell on that, because I
12 think that was only a passing remark by the government and
13 really was not central to their argument. And you did respond
14 to it.

15 MR. SHECHTMAN: I just --

16 THE COURT: But, just for the record, so to speak, the
17 one thing no judge in imposing sentence should ever take
18 account of is immediate public views. The public in the much
19 broader sense, of course, is ultimately the boss. But
20 immediate momentary public views should not be taken account of
21 for two different reasons. One is, the people who are making
22 an outcry, if they are, which I don't think was necessarily
23 true in this case anyway, are acting on limited information.
24 They don't have the benefit of what I have, and what counsel
25 has, with all the things we've been discussing here today. And

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1 it's very notable that many, many studies have shown that in
2 many high profile cases, where the public as a whole was
3 calling for a very high sentence, the jury that heard the
4 evidence and found the defendant guilty, when polled, asked for
5 a low, lenient sentence. And the difference was because the
6 jury knew the facts. And the other reason is because the role
7 of a judge is to apply the law to the facts and reach a
8 reasoned conclusion.

9 While in a very ultimate sense my boss is the people
10 of the United States, much what their direction or what the
11 institution directs judges, the Constitution directs federal
12 judges to do, is to do their best to apply reason to the legal
13 and factual issues before them, and not to take account of
14 anything else.

15 So, I probably went on too long on a matter that's
16 really very secondary in any event. But, you don't have to be
17 concerned about that.

18 MR. SHECHTMAN: Let me then next just make one last
19 point. I take it the notion of general deterrence is were the
20 public to see a sentence for Andrews that is not severe,
21 someone would say to themselves, I can get away with a large
22 theft. And it's hard for me to imagine that anyone would take
23 that lesson from this case. I don't know that I can say this
24 better than your Honor did about the fundamental precept of our
25 legal system being to distinguish between people who make

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1 rational choices and people who don't. But, this was not a
2 rational choice, it was certainly one where capacity was
3 diminished. And if there is somebody out will who says to
4 themselves, I can steal, I can buy my island off of Nova Scotia
5 and I can fool a judge, I reread your Carucci decision this
6 morning. Goes back to 1999. And I remember the case because I
7 think remnants of it were still at the U.S. attorney's office
8 when I was, and if my memory is right, it's a massive scheme on
9 the stock exchange fraud to trade ahead of customers. And it
10 looked s like Mr. Carucci was a problem gambler. But, his
11 cohorts came to him and said we have a great scheme, will you
12 join. And he said count me in and he joined. And he stood in
13 court and said geez, I was a pathological gambler, and that's
14 why I traded ahead with my fellow workers.

15 And I guess if there's people out there who will say
16 to themselves Andrew Caspersen got leniency and I can fool a
17 judge into leniency, my response would be not this one, and not
18 very many judges, if any, in this district that I've ever
19 practiced in front of.

20 THE COURT: All right. There is only one other
21 provision of Subsection two, and that is (D), to provide the
22 defendant with need educational or vocational training, medical
23 care, or other correctional treatment in the most effective
24 manner.

25 While the bureau of prisons attempts to give medical

GB43CASS

1 care as best it can, the kind of psychological care that would
2 be called for here is provided, but not probably nearly in the
3 most effective manner. But, I don't want to dwell on this
4 because I think it is a very minor aspect of the sentence one
5 way or the other.

6 The only other part of Section 3553(a) that I thought
7 counsel might want to comment on, although you have both
8 briefed this issue, is the disparity issue. The government
9 argues that in other cases high sentences have been imposed.
10 The defense argues that those cases are all very different from
11 the case before the Court here.

12 I have very carefully considered both sides of that
13 argument, but if there is anything further anyone wanted to
14 say, this would be your opportunity. Anything further from the
15 government on that issue?

16 MS. MAGDO: Not on that, your Honor. Thank you.

17 THE COURT: Anything from the defense?

18 MR. SHECHTMAN: No, your Honor.

19 THE COURT: No. Before I hear from the defendant, if
20 he wishes to be heard, let me hear any final statements that
21 each counsel wants to make, starting again with the government.

22 MS. MAGDO: Your Honor, as we said earlier, we're not
23 asking the Court to ignore or dismiss the mental health issues
24 that the defendant had. But we do submit that they need to be
25 seen in the entire context of what was going on here. And

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1 there are two particularly salient factors that come to mind
2 when we look at the whole context.

3 One, is what your Honor has already mentioned to some
4 extent, the egregiousness of the crime. But what I'd like to
5 focus on in particular is the effect of the victims, the
6 non-financial effect on the victims. There are at least three
7 such effects.

8 One is the fact the defendant committed this crime by
9 stealing the identities of two people, one of those people was
10 a friend of his, whom he had already defrauded, and he used his
11 driver's license in an attempt to get another \$50 million
12 investment in the month that he was arrested.

13 Second, the reputational harm to the victims who have
14 not come forward. Many of these people, as I noted in my
15 brief, are themselves investment professionals, and who have
16 told me that when they know someone as well as they knew
17 Mr. Caspersen, they make million or multimillion dollar deals
18 with a handshake because of the level of trust that they have.
19 And not only do they feel that that trust was abused and
20 betrayed, but they are very afraid that they themselves will be
21 publicly exposed and ridiculed for having had the naivete as
22 people may judge them to have had to enter into this kind of an
23 arrangement.

24 And third, is the employee at Park Hill Group that
25 Mr. Caspersen dragged into this mess when one of the investors

GB43CASS

1 wanted to have immediate redemption of his investment because
2 he had become suspicious. Mr. Caspersen created a fake domain
3 name, a fake e-mail address, he set up a telephone number, he
4 impersonated someone on the phone, but apparently all of that
5 not enough. So when the person asked to speak to someone else
6 at Park Hill Group to verify that the redemption was underway,
7 Mr. Caspersen turned -- he was at this point a partner, and he
8 turned to one of the employees and said please get on the line
9 with this investor and tell them that their redemption is
10 pending. So, to endanger the reputation and the profession of
11 a junior employee in that way I think is also particularly
12 egregious.

13 The second main factor is the fact that Mr. Caspersen
14 was uniquely positioned to seek help for his addiction. We
15 don't dispute that he had an addiction, but he had many
16 opportunities, and he refused them. In particular, I'd like to
17 focus on the events of late 2012 and early 2013, as we already
18 have, when he conned two members of his family into giving him
19 two and a quarter million dollars, proceeded to lose it in
20 options trading, first tried to blame the brokerage house for
21 losing the money. But apparently, because those kinds of thing
22 just don't happen, he was forced to confess to those family
23 members that he had lost their money in trading. So they very
24 correctly told him he needed to get help, and he went to see a
25 psychiatrist.

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1 And he did not make the slightest effort to avail
2 himself at that point. He had already been exposed as a
3 fraudster. He had already harmed his family. He had already
4 lost \$19 million of his and his family's money by that point.
5 I think it's pretty clear that that's a very bad situation to
6 find yourself in. And what did he do when he went to the
7 therapist? He lied, he failed to take the therapist's advice,
8 he went for seven 45-minute sessions and then stopped going.

9 He called six months later to get a refill on a
10 prescription. The psychiatrist told him you should continue
11 therapy, I'm not going to prescribe any medication to you until
12 you do, and he never went back.

13 It's that behavior that we're asking the Court to hold
14 the defendant accountable for. He had the resources, the
15 means, the intelligence, and the family support, that very few
16 addicts have. His family, his wife has stood by him even in
17 light of what's happened in 2016. There is no reason to think
18 she wouldn't have stood by him in 2012, if he had enlisted her
19 help. All the things that he's been doing since March, since
20 his arrest, inpatient psychiatric treatment, twice a week
21 individual counseling, attending GA meetings, enlisting the
22 support of his family. Those things have worked. He hasn't
23 gambled since then. He hasn't had a drink since then. And
24 there is no reason to think those things would not have worked
25 if he had made an effort earlier on.

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1 He had a chance. He had a moment of intervention by
2 outside forces. And he completely refused to do anything. In
3 the words of the psychiatrist who has been treating him since
4 March, he didn't even try. And there has to be some
5 accountability for that failure.

6 Like Carucci that the defendant just cited, your Honor
7 pointed out that in that case, the defendant did not engage in
8 anything like a Dostoevskian struggle to rid himself of his
9 addiction.

10 THE COURT: I remember that guy. He was a
11 contemporary of Jeremy Bentham.

12 MS. MAGDO: And similarly, here, there was no
13 struggle, Dostoevskian or otherwise, there was not even a
14 meaningful effort.

15 For all the addicts who have struggled and who have
16 been in and out of treatment, who have made real efforts, and
17 yet cannot overcome their addiction, there has to be justice
18 for someone who had the means, the support, the resources, the
19 education, to know that he needed to get help. And refused.

20 THE COURT: Thank you. Let me hear from defense
21 counsel.

22 MR. SHECHTMAN: Judge, I will not speak at length, but
23 I hope what I say will help the Court and Mr. Caspersen.

24 In another courtroom I would begin by telling the
25 judge that the sentencing guidelines are a failure and should

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1 not be our guide today. Your Honor, however, knows that quite
2 well. Sentencing is a time for moral judgment, and a grid
3 cannot capture the complexity of a life.

4 In another courtroom, I might discuss the neuroscience
5 literature on pathological gambling. Dr. Potenza has done that
6 today. Suffice it to say we know far more today than we did 10
7 years ago, and we'll know far more in 10 years than we know
8 today.

9 But what is beyond dispute is that pathological
10 gambling is a mental illness. That does not mean that
11 Mr. Caspersen's actions were involuntary. It does not excuse
12 his actions. Stealing \$38.5 million from family and friends is
13 inexcusable. But his illness should affect how one assesses
14 his culpability, and should affect it for the reasons that your
15 Honor said earlier.

16 If there is any doubt that these crimes arose from
17 mental illness, I remind you of these undisputed facts. Andrew
18 Caspersen lost \$23 million of his own money betting options.
19 Andrew Caspersen's trading, his coin flips were doomed to
20 failure. Mr. Rosen, the options expert, writes they were a
21 recipe for inevitably losing everything. Again, in Mr. Rosen's
22 words, only an irrational state, only a person in an irrational
23 state would embark on and would remain on the path
24 Mr. Caspersen pursued.

25 Your Honor referred to those trades earlier as high

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1 risk. And respectfully, I don't think that's the right
2 characterization. If you stand here and flip a coin, and each
3 time you win you double that bet, heads, heads, heads, that
4 coin's going to come up tails at some point, and you're going
5 to lose everything. That's what Andrew Caspersen's bets were.
6 And the crazy thing is, he knew it. He once showed his father
7 that it didn't seem like the greatest strategy, and he pursued
8 it, 2007, 2008, all the way until his arrest.

9 Mr. Caspersen may be angry at me for doing this,
10 because it's a story that he told me that he heard in that
11 church basement. But there is a fellow who owned a store and
12 the store had a slot machine in it, and it was rigged. And the
13 fellow was a pathological gambler. The store owner. And he
14 played his own slot machine knowing it was rigged, because that
15 was the action. Pulling that machine. And that was the action
16 here, flipping that coin. Heads, the stock market's going to
17 go down, heads it's going to go down. And eventually at the
18 end of February of this year, it went up.

19 So, as I say, respectfully, this isn't high risk.
20 This trading pattern bordered on madness.

21 A graduate of Princeton and Harvard Law School, Andrew
22 Caspersen spent much of his waking hours staring at and even
23 recording the ticks of the S&P index.

24 Another story he won't be happy with me telling, but I
25 have this feeling if I walk out of this courtroom and if I

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1 don't say everything, that I know I'll be dis-serving the judge.

2 This is a fellow who went with his wife to see
3 Hamilton, and he spent Hamilton looking at his cell phone to
4 look at the S&P index so that the people behind him said what's
5 your problem, sir. And you know what his problem was, I know
6 what his problem was. And I joked with Ms. Lynaugh there are
7 10 criteria in the DSM index. I can give you one. If you
8 can't watch Hamilton without looking at the S&P index, that's a
9 serious mental illness.

10 What else do we know. We know that his trading
11 records for 2012 spanned 440 pages, and that's roughly true for
12 most of these years. We also know that when he stole for the
13 first time in November of 2014, he had a \$4 million bonus
14 coming in 19 days, and he couldn't wait 19 days, he couldn't go
15 19 days without trading.

16 And of course, as your Honor said, he had \$112 million
17 in his trading account on February 11 of this year, 126
18 intraday. And he placed a \$103 million bet the next morning,
19 everything in on a bet that the market would go down. And if
20 you look at those trading records, that bet was placed at 9:31
21 that morning. The broker who tolerated all this, the broker
22 said to him I should spread the trades over the course of the
23 day, \$103 million in the option market is a big trade. And the
24 answer was see if you can get it done by 10 o'clock. And he
25 did. And so he went from 126 million up to betting 103 and

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1 quickly down to almost nothing.

2 What else do we know? We know that the commissions in
3 January alone were \$444,000. This was a very expensive casino
4 indeed.

5 So, it's not a disputed topic today and maybe I've
6 spent too much time on it. But this was indeed a severe
7 gambling disorder.

8 When I think of Andrew Caspersen, I think of -- and
9 I've said this in what I've submitted to the Court, Alexei
10 Ivanovich, Dostoyevsky's gambler, who said even as I approach
11 the gambling hall, as soon as I am two rooms away, I almost go
12 into convulsions.

13 Andrew Caspersen was Dostoevsky's gambler. Whether it
14 was to relieve the pressure, whether it was the thrill of being
15 in the action, what mattered and only mattered in the last few
16 years was being in the action.

17 Like all compulsive gamblers, like the one I spoke
18 about who had the slot machine in his store, Andrew Caspersen
19 believed that his wrongs were temporary, and would be conquered
20 by persistent betting. He suffered what's been called a
21 gambler's fallacy, a win was sure to follow from a streak of
22 losses. Studies show if you ask a pathological gambler if
23 there is skill involved in playing a slot machine, he will tell
24 you it is equal chance and skill. A compulsive gambler
25 believes he's in control when he's out of control. And that,

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1 too, is Andrew Caspersen. No matter how many times he lost
2 everything, he was convinced he would win it all back.

3 These were friends, these were relatives, that he did
4 not intend to harm, because he thought he would win. And that
5 was madness again, because he was destined to lose and he hurt
6 people who were very close to him.

7 He seemed to never understand with these trades, as
8 they say, what goes up must come down. And that's true of the
9 stock market.

10 If you read the letters from Andrew's friends, you
11 find a constant theme. Andrew was the adult in the room, he
12 was everyone's role model, everyone's moral compass. By
13 November 2014 when he started stealing from his friends, his
14 moral compass was broken. He was no longer pointing straight.
15 He needed to be all in every day.

16 Judge, I'm new to pathological gambling. This is my
17 second case. I've tried to read as much of the literature as I
18 could. What I'm more familiar with is a not unrelated illness,
19 anorexia. As you know, too many young women, and it seems to
20 be women in our country, and often the brightest, are afflicted
21 with the disorder. It is an epidemic. And like pathological
22 gambling, it causes people to act irrationally. Telling an
23 anorexic to eat is like telling a compulsive gambler to stop
24 betting. Were it so easy. Like pathological gambling,
25 anorexia often kills. Part of the motto of Gamblers Anonymous

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1 is this: Many pursue it into the gates of prison, insanity, or
2 death. The two disorders are akin in this way as well.
3 Neither is a moral failing. We'll learn more about both in the
4 next decade. But what we know should teach us not to judge
5 those who are afflicted too harshly.

6 A European essayist has written these words: The test
7 of one's humanity is whether one is able to accept this fact
8 not as lip service, but with the shattering recognition of
9 kinship. There but for the grace of God go I.

10 Why was Andrew Caspersen afflicted? I don't know.
11 Dr. Potenza doesn't know. Dr. Goodman doesn't know. In our
12 lifetime we'll probably never know. But afflicted he surely
13 was.

14 When Andrew Caspersen first came to see me after his
15 hospitalization, my office was close to his Park Hill office
16 where he worked. He came with his hat pulled over his eyes.
17 He was afraid he would bump into a colleague on the street, and
18 he feared their disapproving looks. He was deeply ashamed. He
19 remains ashamed, but he's now met with several of the victims,
20 and their lawyers, and tried to explain his conduct to them.
21 He has cried and asked for their forgiveness.

22 Because of GA, Dr. Goldman, his wife, and his many
23 friends, Andrew holds his head up higher now and doesn't hide
24 his face.

25 He has lost his career, the SEC has barred him from

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1 the securities industry, and he has lost much more. But
2 slowly, he's regained his self worth, and I truly believe that
3 slowly he has regained his good judgment.

4 In a word, Andrew Caspersen is not the same man who
5 was arraigned in this building seven months ago and then rushed
6 to a suicide watch. He has stopped gambling, he has stopped
7 drinking, he has attended GA and AA regularly, his sponsors are
8 here today to support him as they have this past seven months.

9 They know in 2016 no drug, no elixir exists to treat
10 pathological gambling. The treatment that may work best is GA.
11 And I've said it before today, men and women coming together,
12 often in a church basement, to share and reinforce their
13 commitment to sobriety.

14 Andrew has also seen an experienced therapist
15 regularly, and benefited greatly from their relationship. As
16 Dr. Goldman writes, he's been through therapy honestly and
17 seriously. With therapy comes insight, and Andrew has gained
18 valuable insight.

19 He's also reconciled with his mother and his wife.
20 Their anger towards him has been replaced with their pleas for
21 leniency. And Andrew is now the doting father of two young
22 children, who had lost his full attention when his attention
23 was rivetted on the S&P index.

24 Judge, you've always recognized that even when the
25 guidelines were their most procrustean, that sentencing is a

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1 day of moral reckoning which takes into account all aspects of
2 crime and the offender. Andrew Caspersen is an uncommonly good
3 man who lost his way. I know you will judge him fairly.

4 I thank the Court.

5 THE COURT: Thank you very much. Now let's hear from
6 the defendant, if he wishes to be heard.

7 THE DEFENDANT: Your Honor, I've committed serious
8 crimes and frauds. I have no one to blame but myself. My
9 victims include lifelong friends, former colleagues, my former
10 employer, my mother, my brother, and my wife. All of these
11 people had one thing in common. They trusted me. And I abused
12 that trust in immoral and illegal ways so that I could gamble.
13 I lost their money, I abused their friendships, I destroyed my
14 family's name. I humiliated my wife, and I subjected my
15 children to the future knowledge that I did all of this.

16 There has been a lot of talk about compulsive gambling
17 today. While it explains what I did, I know in no way does it
18 excuse it, and it certainly does not take away any of the
19 financial or emotional devastation I brought to my victims.

20 It is, I learned, a cautionary lesson for a compulsive
21 gambler watching this hearing, what path to take before you get
22 to the stage where victims are defrauded. The first path is
23 what I did for almost 20 years. I chose gambling over
24 everything. Over everything I loved and treasured. I chose it
25 over my morals, my conscience, my relationships, my family, my

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1 career, my wife, my children, and eventually the law. I was
2 willing to do anything to continue, and eventually I did.

3 The second path that a compulsive gambler could take
4 is what I've tried to take since my arrest. It's involved
5 psychotherapy, honesty, most importantly Gamblers Anonymous.
6 Yes, this path I took after I was arrested, after I was
7 publicly humiliated, that's what -- that's what it took for me.
8 I wasn't willing to seriously stop in 2012 or 2013 or 2001. It
9 wasn't until outside forces intervened and put me in jail, and
10 then put me in the psychiatric ward, that I realized enough was
11 enough, and I couldn't continue down this path.

12 The only thing worse than committing all these frauds
13 against all these people I loved would be not to learn from it
14 and actually go out and gamble and drink again.

15 I stand before you asking for mercy. I don't know
16 what the right sentence is for what I did, but I do know for
17 the rest of my life, regardless of this sentence, I will be
18 making amends.

19 As for the risk of relapse, it's always possible for
20 an addict. The numbers are not great. But I do know in the
21 program that I've participated in, many times a week, the
22 people who go through the steps and the people who attend
23 succeed. It is, the big book says, rarely has someone who's
24 followed our steps thoroughly failed. I intend to follow those
25 steps thoroughly one day at a time. I am finally on the right

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1 path.

2 I am terribly sorry. I could not be more sorry that
3 it took the devastation that I brought upon these victims to
4 get to this right path. I'm not going to waste the opportunity
5 now that I am. Thank you.

6 THE COURT: Thank you very much. So, a point that
7 this Court has made before, and that Mr. Shechtman also picked
8 up on, is that a sentence more than anything else is a moral
9 judgment.

10 Among my many other problems with the guidelines,
11 putting aside their irrationality, putting aside their
12 draconian far too punitive approach to all crimes, not just
13 white collar crimes, putting aside their very real
14 responsibility for the portion of the mass incarceration of
15 which this country should be so ashamed, is the fact that they
16 regard sentencing as an exercise in bean counting, as opposed
17 to one of the most difficult tasks that those fallible human
18 beings we call judges have to undertake, which is a moral
19 judgment on a fellow human being.

20 But, Congress, in its wisdom in enacting Section 3553,
21 has very clearly recognized the moral judgments involved,
22 because they put first and foremost that the Court must focus
23 on the nature and circumstances of the offense, in this case
24 egregious, and history and characteristics of the defendant, in
25 this case impaired. And they direct how the Court is to

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1 resolve that tension. And also to take account of the somewhat
2 more abstract, but still very fundamental purposes, of
3 sentencing such as deterrence, just punishment, and the like.

4 By decreeing that the Court shall impose a sentence
5 sufficient, but not greater than necessary, to comply with
6 these various purposes, that's an expression of a moral
7 judgment, too. That's an expression of the notion that even in
8 this cruel world where people commit, as the defendant has
9 here, terrible offenses, the punishment of prison is not one
10 that can ever be justified beyond the purposes that Congress
11 has specified. It can never be an act of revenge, it can never
12 be an act of gratuitous expression of outrage. Life is too
13 precious to permit that kind of sentence.

14 So how does one apply all that to this case. The
15 guideline range of 15 years or so is absurd. The probation
16 officer, sort of cutting the baby in half, recommends a
17 sentence of about seven and a half years. And there is a
18 certain rough justice to that for, as the government points
19 out, one cannot overlook not just the size of the fraud, but
20 also the real impact on victims of the fraud. And the fact
21 that the crime was committed by a person who had so many
22 benefits, so many gifts, so many opportunities to say I'll stop
23 and did not.

24 But, having said all that, in addition to his very
25 real gambling disorder, which I am quite convinced very

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1 seriously impacted his exercise of rational control and
2 rational decision making, there is also the fact that no
3 purpose will be served by letting him rot in prison for years
4 on end. It will serve no purpose that the Court can justify.

5 The conclusion is that there must be a serious prison
6 sentence here, but not the kind that the guidelines suggest.

7 The sentence of the Court, therefore, is that the
8 defendant is sentenced to four years in prison -- 48 months --
9 to be followed by three years of supervised release on terms
10 that I'll get to in a moment. Restitution will be ordered in
11 the amount of \$27,831,791.06.

12 This is without prejudice, of course, to the claims
13 that Mrs. Caspersen has made which I will resolve in a separate
14 order.

15 And there is also a mandatory special assessment of
16 \$200.

17 By the way, the sentence is concurrent on all counts,
18 on both counts.

19 The terms of supervised release are: First, the
20 mandatory conditions that the defendant shall not commit
21 another federal, state or local crime; that the defendant shall
22 not illegally possess a controlled substance; that the
23 defendant shall not possess a firearm or destructive device;
24 that the defendant shall cooperate in the collection of DNA.

25 But the one other mandatory condition, the mandatory

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1 drug condition is suspended because I will impose instead a
2 special condition requiring both drug testing and alcohol and
3 drug -- excuse me, both alcohol and mental health treatment.

4 There will also be imposed the standard conditions of
5 supervision one through 13, they appear on the face of the
6 judgment, and will be gone over with the defendant by the
7 probation officer when he reports to begin his period of
8 supervised release.

9 And then there are the special conditions: First,
10 that the defendant shall participate in a mental health
11 treatment program approved by the probation office, on the
12 standard terms and conditions. Second, that the defendant will
13 participate in an alcohol treatment program as prescribed by
14 the probation officer on the standard terms and conditions.
15 Third, that the defendant shall provide the probation officer
16 with access to any requested financial information.
17 Particularly, well, any requested information financial
18 information, including trading information. Fourth, that the
19 defendant shall not incur new credit charges, open additional
20 lines of credit, or open securities trading accounts without
21 the approval of the probation officer, unless the defendant is
22 in compliance with the installment payment schedule. Fifth,
23 that the defendant shall pay 20 percent of his gross monthly
24 income towards the restitution requirement beginning 30 days
25 after his beginning of his supervised release. Sixth, that the

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1 defendant will report to the nearest probation office within 72
2 hours of his release from prison, and he will be supervised by
3 the district of his residence.

4 I will enter a separate order specifying the more
5 particularized terms of the restitution. And there is a
6 forfeiture to which the defendant has previously agreed.

7 So, before I advise the defendant of his right of
8 appeal, and we set a surrender date, is there anything else
9 that either counsel needs to raise with the Court?

10 Yes, ma'am.

11 MS. MAGDO: Your Honor, with respect to the
12 restitution, the government would respectfully ask the Court to
13 hold off on making a restitution order. Even in the PSR, it's
14 noted that there are some shifting amounts. One victim is
15 paying back another victim. There may be additional fees that
16 certain victims are entitled to. Therefore, we would request
17 an additional 90 days --

18 THE COURT: That's fine. But am I right that that
19 doesn't really change the 27 million total, it just affects the
20 allocation?

21 MS. MAGDO: Actually, it does. The amount that the
22 defendant agreed to was a minimum of 36 million and change.
23 And that's just the direct loss to the victims. In addition,
24 certain victims may be entitled to attorneys' fees in
25 connection with their participation in the criminal

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1 investigation.

2 THE COURT: I hear you. So, but sooner than in 90
3 days you need to make a submission, and if there is any
4 disagreement about it, then the defense will make a submission
5 also in less than 90 days, so I can comply with the 90-day
6 limit that the law sets.

7 MS. MAGDO: Yes.

8 THE COURT: I will hold off on restitution until that
9 is determined. Anything else?

10 MS. MAGDO: No, thank you, your Honor.

11 THE COURT: Anything further from the defense?

12 MR. SHECHTMAN: Judge, I don't know what your practice
13 is in terms of recommending an institution.

14 THE COURT: I'm happy to recommend, but it is, as you
15 know in this day and age, those recommendations are often not
16 followed by the bureau of prisons. But I have no problem
17 recommending. Where do you want me to recommend?

18 MR. SHECHTMAN: That's the question. I don't know if
19 your Honor would allow us until Monday just to think about
20 that. Otisville is the best for visitation, but there are not
21 very many beds at the inn.

22 THE COURT: That's fine. Why don't you submit
23 something in writing on Monday. If the government has any
24 problems with it, they can submit something on Tuesday and then
25 I'll hold off entering the judgment until Wednesday.

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1 MR. SHECHTMAN: That's great. Thank you, Judge.

2 THE COURT: In terms of a surrender date. Let me ask
3 my courtroom deputy what she has in mind.

4 THE DEPUTY CLERK: Like Wednesday, January 4?

5 THE COURT: January 4. That's good because that's
6 after the holidays. Any problem with that?

7 MR. SHECHTMAN: No, your Honor.

8 MS. MAGDO: No, your Honor.

9 THE COURT: 2 p.m. at the designated institution on
10 January 4, 2017.

11 Before I advise the defendant of his right of appeal,
12 anything else from defense?

13 MR. SHECHTMAN: Nothing, your Honor.

14 THE COURT: Mr. Caspersen, you have the right to
15 appeal this sentence. Do you understand that if you can't
16 afford counsel for the appeal, the Court will appoint one free
17 of charge? Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Very good. Thanks very much. The Court
20 will adjourn. There is another matter that counsel are aware
21 of that we'll take up in 10 or 15 minutes.

22 MS. MAGDO: Thank you, your Honor.

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